IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.4671 of 2002
Date of Decision : September 12, 2006.

M/s Salient Crafts ..... Petitioner

Vs.

M/S test-N Rai International & others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Arun Jain, Advocate
for the petitioner.

Mr.Hemant Bassi, Advocate
for the respondents.

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P.S.Patwalia, J. (Oral) :

The present revision petition has been directed against order dated 24.7.2002 vide which the learned Civil Judge (Senior Division), Gurgaon has disposed of an application filed by the plaintiff directing defendant no.1 to produce documents in her possession as stated by her in her statement as her own witness. By the said application the plaintiff had asked for the following documents :-

"a) Any sale deed in respect of disputed

property claimed by DW4 in her statement showing bifurcated amount of the plot and that of construction, if any ;

b) *The alleged sale agreement dated 16.8.89 stated to be in possession of defendant from M/s Harmesh Cycle regarding which she has stated her ignorance about the particulars of the total sale consideration and bifurcated sale consideration of the plot and that of construction ;*

c) *Any demand notice and payment received as enhancement amount stated to be made by the defendant to HSIDC in respect of property in question ;*

d) *Any no due certificate or balance payment to be made in respect of the suit property to HSIDC and other correspondence in possession of the defendant ; and*

e) *Cash book stated to be in the possession of defendant from 1.4.94 to 31.3.95 in the office and factory of the defendant."*

The trial court allowed the application merely on the ground that the defendant had stated that the said documents are in her possession and on the ground that the said documents can throw some light on the matter in controversy. The relevant observations of the trial court are as hereunder :-

> *"5. After hearing both sides at length on the present application, I am of the considered view that the same deserves to be allowed. After going through the cross-examination of DW4, it is evident that she has admitted the sale deed in respect of the disputed property claimed by DW4 in her statement and alleged agreement dated 16.8.89 from M/s Harmesh Cycle regarding which she has stated her ignorance about the particulars of the total sale consideration and bifurcated sale consideration of the plot and that of construction. DW4 in her cross-examination has also admitted the demand notice and payment received as enhancement amount stated to be made by the defendant to HSIDC in respect of the property in question. She has also admitted that cash book is in her possession from 1.4.94 to 31.3.95 in the office and factory of the defendant. All the above stated documents can throw some light in the matter in controversy. Therefore, in my opinion the above mentioned documents except alleged*

> *dispatch and receipt register as mentioned as Serial No.3 in the application are necessary for affecting cross-examination of DW4."*

Learned counsel contends that in the present case a reading of the order would show that there is no indication that the documents asked to be produced would be relevant to any of the questions raised in the suit. He submits that before production of a document can be ordered under Order XI Rule 12 of the Code of Civil Procedure the trial court should be of the opinion that the documents relate to the controversy raised in the suit and that the production of such documents would be in furtherance of the proper disposal of the controversy raised in the suit. To support his argument, learned counsel relies upon a judgment in the case of *Ms. Monica Bibli Sood vs. Dr.Karan J. Kumar and others* reported as *2005(2) RCR (Civil) 455*, the relevant observations of which are as hereunder :-

> ***"7.*** *Keeping in view the said principle of law it need to be examined whether the document in question relate to any question in the suit and whether production of such document would be in furtherance of fair disposal of the suit or to save litigation expenses. Neither in the application nor in the order, there is any indication that such document would be relevant to any of the question in the suit. The argument that such document would be relevant to prove the acceptance of gift was not raised before the trial court. In fact, it appears that the plaintiff is making fishing*

> *inquiries to find out the details to build up his case. The plaintiff has to prove that the gift executed by the father of the parties is result of fraud exercising undue influence or otherwise illegal null and void. In the absence of any fact that such document would be relevant for determination of any controversy in the present suit, I am unable to hold that the learned trial Court was within its jurisdiction to pass an order directing the defendant to produce such document."*

He therefore contends that the order of the trial court can not be sustained and is liable to be set aside. Learned counsel for the respondents however submits that there is an observation of the trial court that the document can throw some light on the matter in controversy. He further states that all the documents are very relevant and necessary for proper adjudication of the controversy. He therefore submits that the order passed by the trial court warrants no interference.

After hearing learned counsel for the parties I am of the opinion that the trial court has ordered production of all the documents asked for by the plaintiff without examining as to whether or not the said documents are relevant to the controversy raised and can throw some light in the matter or not. In this view of the matter I am of the opinion that the order passed by the trial court directing production of all the documents can not be sustained. The same is therefore set aside. The trial court would now re-consider the application filed by the applicants in the light of the

observations made herein above and pass a fresh order in accordance with law.

The present revision petition stands disposed of in the aforementioned terms.

September 12, 2006 (P.S.Patwalia)
monika Judge